

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

AMRA DIVLJANOVIC, RAMSES CARRANZA,
MARK ASKEW, NORA LAJQI, FAYE
TAGHAVI, RINA TOLEDANO, MARVIN K.
BLAKES, and JUANITA V. PARKS, individually
and on behalf of all others similarly situated,

Plaintiffs,

vs.

SAKS & COMPANY d/b/a SAKS FIFTH
AVENUE

Defendant.

Case No. 14-cv-7533 (SHS)

DECLARATION OF MONIQUE MCCALL

KELLEY DRYE & WARREN LLP
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New York, New York 10178
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DECLARATION OF MONIQUE MCCALL

I, Monique McCall, do hereby declare as follows:

1. I am over eighteen years of age and am competent to testify regarding the matters stated in this declaration. I give this declaration voluntarily. I have not been promised any benefit, been coerced, or been threatened in any manner in exchange for the testimony in this declaration.

2. I am currently employed by Saks Fifth Avenue ("Saks"), located at 611 Fifth Avenue, New York, New York 10022 as a commission sales associate. I began working at Saks two years ago, in or about the winter of 2012/2013. I work in the contemporary collections department which includes mixed brand denim merchandise and related clothing.

3. A commission sales associate at Saks is responsible for making sales of store merchandise throughout the store as well as keeping their area clean and tidy for customers, stocking shelves with new product, and conducting what is called "clienteling" which includes reaching out to customers regarding events at Saks where they can save money on products. A big part of our job as a sales associate is building relationships with clients so they return to shop often.

4. There are two types of commission sales associates at Saks. One type is called a "draw associate." Throughout my time at Saks, I have been a "draw associate" which is also known as a "commission vs. hourly associate." I have always been paid as a draw associate at Saks.

5. Saks calculates commissions based on when any returns are processed. I never know exactly what my commission is for a given week until my sales, my commissions on

those sales, along with any returns for that week, are calculated at the end of that period. It's the same for all sales associates.

6. I understood the commission plan that sales associates receive from the beginning of my employment at Saks. As soon as you begin employment as a sales associate at Saks, you are provided with a copy of a written commission plan that contains the terms of the draw associate commission system.

7. Each draw associate receives a weekly "draw" which is a set amount of pay under which the associate never drops below. If the draw associate's commission is enough to cover the "draw" amount, the associate is paid all commission in excess of the "draw" amount. If the draw associate fails to accumulate enough commission to cover the "draw" amount, the associate is considered to be "in arrears." Future commission amounts are applied to the subsequent "draw" amount, and any amount of "arrears."

8. I understood from the beginning of my employment at Saks that I needed to make enough commission sales to meet my weekly "draw" amount.

9. When I received the commission sales plan, I also read and understood that if I did not cover my "draw" amount, I would be considered to be "in arrears" and that future commission amounts would be applied to subsequent "draw" amounts and any "arrears" amount I had accumulated. This was easy for me to understand because it is clearly provided for in the written commission plan.

10. From the moment that it was provided to me at the time of hire, I also read and understood that the commission paid under the any of Saks' commission plans is reduced by merchandise that is returned. Specifically, I understood from the time I was hired that, when an item is returned and Saks is able to identify the original sales associate that sold the item, the

commission for the sale would be deducted from that associate's accumulated commissions at the same rate the original commission was paid.

11. Compensation varies because every product has a different commission and your sales will rise and fall depending on the time of the year. For instance, January, February, July, and August are typically very slow months. Also, you can have a great week with sales and not get any returns processed but during another week, you can get hit hard with returns which will lower your commission. I would say over the course of a year, if you do your best with a good sales strategy, you can make very good money. You can have very slow weeks where you just meet your draw amount, and still have your compensation over the course of a year be well over \$100,000.00 total.

12. The system through which sales are rung up and processed at Saks records who originally sold merchandise and places the name of the sales associate on each receipt. It is therefore pretty much impossible for a returned product to be counted against the commission of an associate who did not make the sale.

13. If there is a situation where an associate cannot be identified with returned merchandise, the return is not attributed to anyone.

14. I have never heard of any sales associate being affected by a return of a product that they themselves did not sell. It has also never happened to me.

15. I sometimes "partner up" with other associates to split sales when times are slow on the selling floor. Partnering up happens when two associates agree to help a customer buy products in various parts of the department, for example, trying to sell a pair of jeans with a top that goes with it. Whether associates "partner-up" depends on whether the two

associates agree to do so. I would say about 30 % of associates or so do not like to work together to split commissions. It depends on each sales associate's personality.

16. Saks' return policy is very broad and it will take back a product whenever. This is not an issue for sales associates, however, because there are things each sales associate can do in order to reduce returns. Sales associates can make sure they serve a type of customer who is less likely to return products – this takes getting to know your client and understanding their reason for shopping. Also, you cannot push a sale too aggressively because, if you do, the merchandise is more likely to be returned. You have to be honest with clients and the less successful sales associates do not do this. People thank me for my honesty all the time and it helps me build relationships.

17. There are many things that contribute to the success of a sales associate at Saks. For instance, people who have a negative attitude, or complain regularly tend not to be good at sales. Some of these people have a simple lack of effort and motivation. On the other hand, people who are positive and proactive (traits which themselves come in different forms depending on the sales associate) end up being successful.

18. I estimate that about 50% of my sales are from walk-in customers and the other 50% are from clients that I deal with on a regular basis and which I have developed relationships with. My floor has more walk-in customers than other floors at Saks and that creates a situation where we get a wider range of customer personalities that we have to deal with which will make sales fluctuate more.

19. Saks encourages sales associates to sell merchandise outside of their home department – this is called “cross-selling.” It depends on each associate to make the effort to cross-sell and no one has any discretion to prevent cross-selling for associates. Specifically,

Directors never show favoritism towards some associates by preventing them from cross-selling in other parts of the store.

20. Cross-selling is a skill that can be developed depending on the associate. For instance, if a client wants a gray colored dress and there is nothing on the fifth floor where I work, I (and any other associate in that situation) needs to have the knowledge and remember that there is a gray dress on the second floor.

21. As a commission sales associate, I am required to clock in and out for work every day at a cash register in the store. I clock in and out at the beginning and end of my shift and meal periods.

22. When I arrive at Saks for work and when I return from any meal break, I always clock in when I am back on the floor ready to work.

23. When my shift ends and when I leave for any meal break, I always clock out.

24. Sometimes I have to work a little bit past my time for clocking out but this is because I am usually helping a client. You cannot predict how much time you need to spend with a client. Whenever this happens, I am always still on the clock while working and making a sale. I don't clock out until I am finished working, and no one at Saks has never asked me to do otherwise.

25. During my time at Saks, I have never made a sale or conducted work after I clock myself out at the end of my shift or at the start of my meal break. Similarly, I have never been ordered, pressured, or incentivized in any way by a Saks supervisor to make a sale after I clock myself out at the end of my shift or at the start of my meal break.

26. Saks gives sales associates the opportunity to attend various vendor shows throughout the workday. Most vendor shows are held in the morning and occur in lieu of Saks' morning meeting. Thus, all sales associates in attendance are already clocked in for the morning shows. These shows last 15-20 minutes at most.

27. If Saks asks that associates get in at 9 A.M. for a clinic instead of 9:30 A.M., they allow us to leave a half-hour early, at 5:00 P.M.

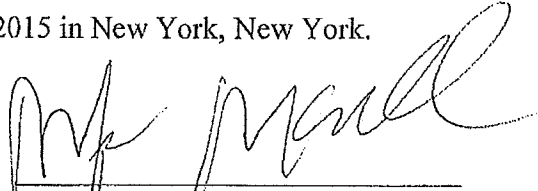
28. Vendor clinics that are held in the store are very good at giving sales associates product knowledge. The knowledge that the clinics give may be used to sell individual products, but it also allows a sales associate to know what other products are sold in the store. This is particularly helpful in case the situation of the "gray dress" (described above) comes up.

29. There are also sometimes "fashion shows" at Saks which are usually held in the morning. Often, these consist of associates wearing clothing and we watch other associates tell us about the product. These shows happen about 4 or 5 times a year but they happen on each floor (department) independently. Accordingly, each floor (department) has a different schedule of fashion shows. In any event the fashion shows usually occur only about 20 minutes before opening.

30. Saks pays sales associates what is called "non-productive" time which is pay for time when they cannot be selling, but need to conduct tasks. One such task that pays "non-productive" time is stocking shelves. The non-productive time tasks are always done before the store opens at 10 A.M. and we are always compensated for it.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this ^{7th} day of *April*, 2015 in New York, New York.



MONIQUE MCCALL